LIBRARY
SUPREME COURT, U. S.

No. 21

Office-Supreme Court, U.S.
FILED
FEB 14 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

JAMES B. CAREY, AS PRESIDENT OF THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,
Petitioner,

v.

WESTINGHOUSE ELECTRIC CORPORATION

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

BENJAMIN C. SIGAL,
DAVID S. DAVIDSON,
WINN I. NEWMAN,
1126 16th Street, N. W.,
Washington 6, D. C.
Attorneys for Petitioner.

ISADORE KATZ,
1501 Broadway
New York 36, N.Y.
Of Counsel.

TABLE OF CASES

	Page
Carey v. *General Electric Co.*, D.C. S.D. N.Y., No. 61-3636, April 19, 1962, 50 LRRM 2119	2
Proctor and Gamble Independent Union v. *Proctor and Gamble*, 51 LRRM 2752 (C.A. 2, No. 61, Dec. 10, 1962)	2
Smith v. *Evening News Association*, 371 U.S. 195	2
Steelworkers v. *General Electric Co.*, D.C. N.D. Ohio, No. 37415, Nov. 30, 1962, 51 LRRM 2531	2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 485

JAMES B. CAREY, AS PRESIDENT OF THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,
Petitioner,

v.

WESTINGHOUSE ELECTRIC CORPORATION

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Since the filing of the petition for writ of certiorari herein, two events occurred which provide further reason for the grant of the petition.

1. On February 1, 1963, a motion to vacate was filed by the petitioner in No. 419, *Local Lodge No. 1836, IAM* v. *Local No. 1505, IBEW*, on the ground that a settlement had been reached in the pending action. The issue in that case, in which certiorari was granted, is identical to the first issue in the instant case. In the event that the motion to vacate is granted in the *Local Lodge No. 1836* case, additional reason would exist to grant the petition for certiorari in the instant case, as the Court has already deemed the issue raised herein appropriate for its consideration, and the in-

stant case will become the only pending vehicle for its consideration.

2. The decision of this Court in *Smith* v. *Evening News Association*, 371 U.S. 195, decided December 10, 1962, confirms that the decision of the New York Court of Appeals below is in conflict with the preemption decisions of this Court. The authority of the Board to deal with matters over which it has jurisdiction which also violate collective bargaining contracts "is not exclusive and does not destroy the jurisdiction of the courts under §301." 371 U.S., at 197. See also *Proctor and Gamble Independent Union* v. *Proctor and Gamble*, 51 LRRM 2752, 2755 (C.A. 2) No. 61, Dec. 10, 1962).

Indeed, as the decision of the Court below was based on preemption (Se Appendix A to Petition p. 21), it is now clear that it was in error.[1]

---

[1] The deviation of the Court below from the principles of the *Steelworkers* decisions in connection with the second issue raised in the petition for writ of certiorari is also clear. More is involved than a mere difference in opinion over the application of the *Steelworkers'* doctrines to particular contract language. The decision below departs from the mandate of this Court to narrowly confine its area of inquiry and deny arbitration only when "the arbitration clause is not susceptible to an interpretation that covers the asserted dispute." 363 U.S., at 583. In addition to cases cited in the petition at pp. 16-17, see also *Steelworkers* v. *General Electric Co., D.C. N.D. Ohio*, No. 37415, Nov. 30, 1962, 51 LRRM 2531, 2534; *Carey* v. *General Electric Co.*, D.C. S.D. NY., No. 61-3636, April 19, 1962, 50 LRRM 2119, 2128-2130.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be granted.

Respectfully submitted,

BENJAMIN C. SIGAL,
DAVID S. DAVIDSON,
WINN I. NEWMAN,
1126 16th Street, N. W.,
Washington 6, D. C.
Attorneys for Petitioner.

ISADORE KATZ,
1501 Broadway
New York 36, N.Y.
Of Counsel.

(5934-5)